

## United States Senate

February 3, 2021

### VIA ELECTRONIC TRANSMISSION

Jane Nishida  
Acting Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue N.W.  
Washington, DC 20460

Dear Acting Administrator Nishida,

I write to ask for information related to potential conflicts of interest stemming from the prior work of Avi Garbow, who was recently named Senior Counselor to the Administrator. Specifically, I am looking for clarity with regard to his ongoing relationship with his previous employer Patagonia and his work lobbying on behalf of other organizations, such as the Organic Trade Association and its political action committee (PAC).

Before joining EPA, Mr. Garbow was the Environmental Advocate at Patagonia. The company has funded over \$100 million to outside groups,<sup>1</sup> including Sierra Club,<sup>2</sup> Earthjustice,<sup>3</sup> and National Resources Defense Council,<sup>4</sup> all entities with pending litigation before EPA. At Patagonia, Mr. Garbow was closely involved in litigation challenging the last Administration's policies with respect to EPA rulemaking and land use at Bears Ears National Monument.<sup>5</sup> On April 24, 2020, spearheaded by Mr. Garbow, Patagonia filed an amicus brief in support of a challenge to EPA's Affordable Clean Energy Rule, enacted under the Clean Air Act.<sup>6</sup> On August 20, 2020, Patagonia moved to intervene in a lawsuit seeking invalidation of EPA's Navigable Waters Protection Rule, issued pursuant to the Clean Water Act.<sup>7</sup>

On January 27, 2021, EPA publicly announced Mr. Garbow's appointment as Senior Counselor to the Administrator.<sup>8</sup> However, after joining the agency, Mr. Garbow was still serving as opposing counsel of record in a case against EPA. His withdrawal from the case did not occur until January 29, 2021—two full days after EPA announced he was joining the agency.<sup>9</sup>

Pursuant to 5 C.F.R. 2635.502, employees must take appropriate steps to avoid the appearance of having their impartiality questioned in the performance of their official duties. According to Justice Department ethics guidelines, an employee is normally recused for a one-year period from a matter in which their former employer whom they provided services to within the previous year is a party or represents a party.<sup>10</sup> Mr. Garbow should therefore be recused from all of the matters in which Patagonia is a party. For the purpose of avoiding any questions about his impartiality, Mr. Garbow should also be recused from all of the matters in which Patagonia-funded outside entities are a party.

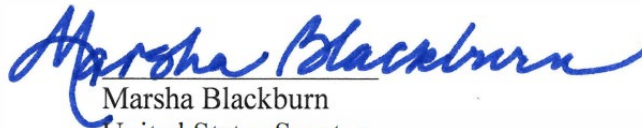
Additionally, there are concerns presented by Mr. Garbow's continued political activity while serving as a federal employee.<sup>11</sup> As of February 3, 2021, Mr. Garbow appears to still serve on the Board of Directors for the Organic Trade Association (OTA), a 501(c)(6) organization that lobbies lawmakers and government officials on policies, laws and regulations affecting the organic industry.<sup>12</sup> OTA runs a PAC that donated primarily to Democratic candidates in the 2020 election,<sup>13</sup> and the OTA Board controls the composition of the PAC's Committee leadership.<sup>14</sup> Under EPA Office of General Counsel's Hatch Act guidelines, political appointees may not in general solicit, accept or receive political contributions.<sup>15</sup>

EPA must take steps to assure the American people that political appointees who represent the top agency leadership are following the highest ethical standards and making unbiased decisions when carrying out their responsibilities. Therefore, I ask that you provide the following requested information by February 10, 2021.

1. A copy of Mr. Garbow's ethics pledge.
2. A copy of Mr. Garbow's recusal statement.
3. A copy of Mr. Garbow's financial disclosure documents, detailing his prior lobbying and legal work with Patagonia and the Organic Trade Association, along with any associated financial compensation.
4. The date Mr. Garbow began employment at EPA under this Administration.
5. Any official or unofficial arrangements Mr. Garbow has for returning to Patagonia after finishing his EPA role, including the date of his return and his expected compensation.

Thank you for your attention to this important matter. I look forward to your response.

Sincerely,

  
Marsha Blackburn  
United States Senator

cc: Sean O'Donnell  
Inspector General  
U.S. Environmental Protection Agency Office

Robin H. Richardson  
Acting Associate Administrator for Congressional Affairs and Intergovernmental  
Relations  
U.S. Environmental Protection Agency Office

Justina Fugh  
Senior Counsel for Ethics  
U.S. Environmental Protection Agency Office

Enclosures

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- <sup>1</sup> Patagonia Action Works, <https://www.patagonia.com/actionworks/about/>.
- <sup>2</sup> Patagonia Action Works: Sierra Club, <https://www.patagonia.com/actionworks/grantees/sierra-club/>.
- <sup>3</sup> Patagonia Action Works: Earth Justice, <https://www.patagonia.com/actionworks/grantees/earthjustice/>.
- <sup>4</sup> Patagonia Action Works: National Resources Defense Council, <https://www.patagonia.com/actionworks/grantees/natural-resources-defense-council/>.
- <sup>5</sup> Jason Mark, *Trading in a Suit and Tie for Fleece*, Sierra Magazine (May 23, 2019), <https://www.sierraclub.org/sierra/trading-suit-and-tie-for-fleece>. While the Bears Ears lawsuit was filed against the U.S. Department of Interior and Department of Agriculture, one issue involved uranium mining's environmental impact, an issue which EPA handles. Earthjustice Press Release (Jul. 26, 2019), <https://earthjustice.org/news/press/2019/trump-administration-new-plan-for-bears-ears>.
- <sup>6</sup> Ryan Van Bibber, *Patagonia and Columbia Join Forces to Fight Trump*, Outside Online (May 5, 2020), <https://www.outsideonline.com/2412745/patagonia-columbia-trump-administration-clean-air>. Brief for Patagonia Works and Columbia Sportswear as Amicus Curiae Supporting Petitioners (Apr. 24, 2020), *American Lung Ass'n et al. v. EPA*, No. 19-1140 (D.C. Cir. Jan. 21, 2021), <https://patagonia.medium.com/brief-of-amici-curiae-patagonia-works-and-columbia-sportswear-company-in-support-of-state-and-4346dec3d785>.
- <sup>7</sup> Sam Lungren, *Patagonia Will Sue Trump Administration over Clean Water Act*, The MeatEater (Sep. 21, 2020), <https://www.themeateater.com/conservation/environmental-issues/patagonia-will-sue-trump-admin-over-clean-water-act>.
- <sup>8</sup> EPA News Releases (Jan. 27, 2021), <https://www.epa.gov/newsreleases/epa-welcomes-additional-members-biden-harris-leadership-team>.
- <sup>9</sup> Notice of Withdrawal of Counsel, Attorney Avi Garbow for Intervenor Plaintiff Patagonia Works, ECF No. 44, Jan. 29, 2021, *Puget Soundkeeper All. et al v. EPA et al.*, No. 2:20-cv-00950 (W.D. Wash.).
- <sup>10</sup> Government Ethics Outline, U.S. Department of Justice (Jul. 5, 2017), <https://www.justice.gov/jmd/government-ethics-outline> (last accessed on Feb. 3, 2021).
- <sup>11</sup> 5 U.S.C. § 7323. See also U.S. Office of Special Counsel, Federal Employee Hatch Act Information, <https://osc.gov/Services/Pages/HatchAct-Federal.aspx#tabGroup31tabGroup12>.
- <sup>12</sup> Organic Trade Association, Board of Directors: Avi Garbow, <https://ota.com/about-ota/board-directors/Avi%20Garbow> (last accessed on Feb. 3, 2021).
- <sup>13</sup> Center for Responsive Politics, Organic Trade Association, Candidate Recipients, 2020 Cycle, <http://www.opensecrets.org/political-action-committees-pacs/organic-trade-assn/C00492132/candidate-recipients/2020>.
- <sup>14</sup> Organic Trade Association, Learn More About Organic PAC, <https://ota.com/about-ota/ota-political-action-committee/learn-more-about-organic-pac>.
- <sup>15</sup> U.S. Environmental Protection Agency, Office of General Counsel/Ethics, Political Activities and Federal Employees (Sep. 2012), <https://www3.epa.gov/ogc/IPACourse/Hatch%20Act%20chart%20Sept%202012.pdf>.